

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a).

Application 18-07-011

In the Matter of the Joint Application of Sprint Spectrum L.P. (U-3062-C), and Virgin Mobile USA, L.P. (U-4327-C) and T-Mobile USA, Inc., a Delaware Corporation for Review of Wireless Transfer Notification per Commission Decision 95-10-032.

Application 18-07-012

**MOTION OF JOINT APPLICANTS TO ADVISE THE COMMISSION
OF DOJ PROPOSED FINAL JUDGMENT**

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Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure (“Rules”), Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C) (collectively, “Sprint”), and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively, the “Joint Applicants”) respectfully submit this Motion to advise the Commission of the terms of a proposed Final Judgment (“Proposed Final Judgment”) and related Stipulation and Order (“Stipulation & Order”) filed by the U.S. Department of Justice (“DOJ”) on July 26, 2019 in the U.S. District Court for the District of Columbia.

The Proposed Final Judgment and Stipulation & Order reflect conditions accepted by, among others, T-Mobile USA and Sprint Corporation (the “Parties”) to resolve the potential competition-related questions raised by the DOJ in connection with its review of the proposed merger between the Parties (the “Transaction”). (A copy of the Proposed Final Judgment, which is subject to judicial review under the Tunney Act, 15 U.S.C. § 16(b), and is contingent on closing the Transaction, is attached hereto as Exhibit 1. A copy of the Stipulation & Order is attached

hereto as Exhibit 2.) As described more fully below, under the Proposed Final Judgment, DISH Network Corporation (“DISH”) – a party to the Proposed Final Judgment and Order & Stipulation – will acquire Sprint’s prepaid wireless businesses (excluding the Assurance Wireless LifeLine business¹) and obtain additional rights that will strengthen DISH’s ability to compete in the retail mobile wireless services market. DISH also commits to offer consumers retail mobile wireless services (including postpaid wireless services) and to deploy a nationwide 5G broadband network.²

As reflected in Joint Applicants’ briefs, the record overwhelmingly demonstrates that the Transaction, as originally structured, is pro-competitive and will benefit consumers and the public by enabling New T-Mobile to build a world-leading 5G wireless network with greater capacity, better coverage, and faster speeds, and that will give consumers better service and lower prices. Further enhancing those enormous public-interest benefits from the New T-Mobile network and its business plans, Joint Applicants have offered more than 50 voluntary commitments in this proceeding.³ Moreover, Joint Applicants have advised the Commission of additional nationwide commitments made to the Federal Communications Commission (“FCC”) that are backed up by a robust enforcement mechanism.⁴ Based on those commitments and the record before the FCC, the FCC Chairman and two of the four other FCC Commissioners have stated that they intend to

¹ DISH’s acquisition also excludes the prepaid wireless customers of Shenandoah Telecommunications Company and Swiftel Communications, Inc.

² *See infra* at 3-4.

³ *See* Joint Applicants’ Post-Hearing Reply Brief on the Joint Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032 (filed May 10, 2019) (“Joint Applicants’ Wireless Reply Brief”) at 2-3; *see also id.*, Appendix 1; Motion of Joint Applicants to Advise the Commission of New FCC Commitments (filed May 20, 2019) (“Motion to Advise Commission of FCC Commitments”) at 3.

⁴ *See generally* Motion to Advise Commission of FCC Commitments. The FCC enforcement mechanism includes strong verification measures, substantial voluntary contributions for any missed deadlines, and continued accrual of the voluntary contributions until any unmet obligations are fulfilled. *See id.* at 2 & n.5.

approve the Transaction pursuant to the FCC’s exclusive authority over national wireless licensing.⁵

The DOJ’s Proposed Final Judgment further demonstrates that the wireless transfers involved in this proceeding⁶ are in the public interest and that the Commission should conclude its review of those transfers.⁷ The Proposed Final Judgment, including the divestitures and other protections summarized below, only reinforces the conclusion that the Transaction is pro-competitive.⁸ Among other things, the Proposed Final Judgment includes the following key features:

- As part of extensive mandated divestitures, DISH will acquire Sprint’s Boost,⁹ Virgin Mobile and Sprint-branded prepaid businesses and millions of Boost and Virgin Mobile customers. Ex. 1 at §§ II.L, IV. (The divestitures exclude the Assurance brand Lifeline business, and New T-

⁵ Chairman Pai Statement on T-Mobile/Sprint Transaction (May 20, 2019), *available at* <https://docs.fcc.gov/public/attachments/DOC-357535A1.pdf>; Commissioner Carr Announces Support for T-Mobile – Sprint Transaction (May 20, 2019), *available at* <https://docs.fcc.gov/public/attachments/DOC-357536A1.pdf>; May 20, 2019 2:16 p.m. Tweet by Commissioner Michael O’Rielly (“I am inclined to support T-Mobile/Sprint proposed merger, even if not convinced of the need for all the newly announced conditions being proposed.”), *available at* <https://twitter.com/mikeofcc/status/1130583036595179520>.

⁶ See Joint Applicants’ Post-Hearing Opening Brief on the Joint Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032 (filed Apr. 26, 2019) (“Joint Applicants’ Wireless Opening Brief”) at 8-10 (describing the “straightforward, parent-level transfer of control of the Sprint Wireless CA Entities,” Sprint Spectrum L.P. and Virgin Mobile USA, L.P., to T-Mobile USA).

⁷ Nothing in the DOJ’s Proposed Final Judgment will prevent or hinder New T-Mobile from fulfilling its buildout or other commitments.

⁸ See, e.g., Joint Applicants’ Wireless Opening Brief at 51-80; Joint Applicants’ Wireless Reply Brief at 30-57; see also Joint Applicants’ Post-Hearing Opening Brief Requesting Immediate Approval of the Transfer of Sprint Communications Company L.P. to T-Mobile USA, Inc. (April 26, 2019) (“Joint Applicants’ Wireline Opening Brief”) at 2, 14-15, 17-19; Joint Applicants’ Post-Hearing Reply Brief Requesting Immediate Approval of the Transfer of Sprint Communications Company L.P. to T-Mobile USA, Inc. (filed May 10, 2019) (“Joint Applicants’ Wireline Reply Brief”) at 2.

⁹ As Joint Applicants explained in their May 20, 2019 *Motion to Advise the Commission of New FCC Commitments*, “the FCC Commitment to divest and sell Boost does not impact its California commitment to the Boost Pilot program after the merger. T-Mobile reaffirms its strong support for that program and its willingness to work with the Commission staff to determine how to best support the pilot, including but not limited to having one of New T-Mobile’s brands (e.g. MetroPCS) assume Boost’s responsibilities under the pilot.”

Mobile will continue to provide LifeLine service under that brand. *See* Ex. 1 at § II.L.) To facilitate DISH’s emergence as a new, competing provider, T-Mobile and Sprint have agreed to provide DISH extensive support to ensure a smooth and orderly transition. Ex. 1 at § IV.A.

- DISH has the right to offer jobs to Sprint’s Prepaid Asset Personnel (consistent with employee rights and employment laws), and New T-Mobile is obligated to facilitate that hiring process and the transition of employees. *Id.* at § IV.A.2.
- DISH also has agreed to buy all of Sprint’s 800 MHz spectrum licenses. *Id.* at § IV.B
- DISH will have the option to assume select cell sites and retail locations that are decommissioned by New T-Mobile for five years following the closing of the divestiture transaction, subject to any assignment restrictions, and New T-Mobile will make available to DISH at least 20,000 decommissioned T-Mobile USA and Sprint cell sites, and at least 400 retail stores. *Id.* at § IV.C-D.
- DISH is obligated to use the divested assets to “offer retail mobile wireless services, including offering nationwide postpaid retail mobile wireless service” within one year of the sale of the prepaid assets. *Id.* at § IV.F.
- DISH is also obligated to deploy a nationwide 5G broadband network and comply with various additional FCC requirements to utilize its extensive spectrum holdings, subject to specific deadlines and backed by penalties. *Id.* at § VIII.A.
- Upon closing of the divestiture transaction, DISH and New T-Mobile will enter into a 7-year Mobile Virtual Network Operator (“MVNO”) agreement that allows DISH to sell retail wireless services under any DISH owned brands using New T-Mobile’s network. In addition, DISH will be entitled to transition the acquired Boost, Virgin Mobile and Sprint-branded prepaid customers to New T-Mobile’s network and activate new customers on New T-Mobile’s network. *Id.* at §§ IV.A, VI. The terms of the DISH MVNO must be “commercially reasonable and ... acceptable to the [DOJ].” *Id.* at § VI.A.
- Moreover, New T-Mobile will offer standard commercial support arrangements to DISH via a Transition Services Agreement for up to 3 years following the close of the divestiture transaction. The transition services provided by New T-Mobile will result in the orderly transfer of prepaid customers to DISH and will also ensure the continued and seamless operation of the Boost Mobile, Virgin Mobile, and Sprint-branded prepaid businesses following transition to DISH's ownership. New T-Mobile must not unreasonably discriminate against any DISH subscribers, and must not

unreasonably refuse to allow devices used by DISH customers to access the New T-Mobile network. *Id.* at § VI.B.

- New T-Mobile must honor all existing T-Mobile and Sprint MVNO agreements and agree to certain extensions of such agreements. *Id.* at § VII.
- New T-Mobile must support eSIM technology on smartphones (to the extent technically feasible), and allow “unlocking” of mobile devices. *Id.* at § VII.
- A Monitoring Trustee will be appointed to ensure compliance with the terms of the Proposed Final Judgment. *Id.* at § XII.

On July 26, 2019, T-Mobile USA entered into an Asset Purchase Agreement with Sprint Corporation and DISH that implements many of the terms of the Proposed Final Judgment. (The terms of the Asset Purchase Agreement are described in greater detail in a Form 8-K filed by T-Mobile USA with the Securities and Exchange Commission on July 26, 2019. A copy of the Form 8-K is attached hereto as Exhibit 3.)

Based on the extensive record before this Commission – now amplified by the FCC commitments and DOJ Proposed Final Judgment – Joint Applicants respectfully reiterate that the Commission should promptly conclude its review of the wireless transfers.¹⁰ Joint Applicants note that this proceeding has now been pending for over a year, and that while the Commission’s schedule called for a Proposed Decision by no later than June 30, 2019,¹¹ no such Decision has yet been issued. Accordingly, Joint Applicants respectfully urge the Commission to issue a Proposed Decision concluding its review of the Wireless Transfer Notification without further delay.

¹⁰ See, e.g., Joint Applicants’ Wireless Opening Brief at 14-16 (the Wireless Notification is subject to the Commission’s review and not preapproval); Joint Applicants’ Wireless Reply Brief at 7-12 (same).

¹¹ Amended Assigned Commissioner’s Scoping Memo & Ruling (Oct. 4, 2018) at 4 (adopting schedule providing for a Proposed Decision by “2nd Quarter 2019”).

Moreover, the DOJ's Proposed Final Judgment addresses only wireless-related issues and has no bearing on the Wireline Approval Application that remains pending before the Commission. As Joint Applicants have previously explained, there is no sound legal or policy reason to delay a decision approving that Application. The record unequivocally shows that the Wireline Approval Application readily satisfies the Commission's well-established standard for approving wireline transfers under California Public Utilities Code § 854(a), and the Intervenor has not presented *any* evidence or argument to the contrary. Accordingly, Joint Applicants respectfully reiterate that the Wireline Approval Application – which raises distinct legal and factual issues from the Wireless Notification – should be granted immediately.

Respectfully submitted this 26th day of July, 2019.

/s/
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¹² Pursuant to Rule 1.8(d), this document is signed on behalf of Joint Applicants.

EXHIBIT 1

PROPOSED FINAL JUDGMENT

EXHIBIT 2

STPULATION & ORDER

EXHIBIT 3

T-MOBILE USA FORM 8-K